

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 80 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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GOVINDBHAI JASHWANTLAL PANCHOLI

Versus

MANJULABEN GOVINDBHAI PANCHOLI  
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Appearance:

MR JV BHAIKAVIA for Petitioner  
MR BG JANI for Respondent  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/06/2000

ORAL JUDGEMENT

#. The matter is called out for hearing in three rounds but none present for parties. On the last date, the matter was heard and it was kept for dictation of judgment. In the meanwhile, the parties from time to

time prayed for settling the matter and some amount has also been paid by petitioner to the respondent towards interim maintenance.

#. Under the impugned order, Judge, City Civil Court No.9, Ahmedabad, directed the husband-petitioner to pay Rs.700/= p.m. towards maintenance to the wife-respondent and Rs.400/= p.m. to the son who is not a party here. The court has further directed the petitioner to pay Rs.2,000/= towards the cost of litigation.

#. The learned counsel for the petitioner contended that the wife-respondent has not produced any evidence for income of the petitioner and the learned trial court has committed serious error of jurisdiction in passing of the impugned order. It has next been contended that the wife and son have been already granted maintenance at the rate of Rs.300/= p.m. and Rs.100/= p.m. respectively by the Judicial Magistrate, First Class, under Section 125 of Criminal Procedure Code. While giving direction in the impugned order, this amount was not given set off. Lastly, it is contended that the wife-respondent being a woman, is eligible for free legal aid and that is also case with minor son and as such the learned trial court has exceeded its jurisdiction in giving direction for payment of costs of litigation. Once the State Government has provided free legal aid to women and children, the learned trial court should not have put this burden of cost of litigation on the shoulder of husband.

#. The learned counsel for the respondent contended that burden to prove the income lies on the husband and in this case he has not given out his income except merely stating that the income of the husband stated by wife is not correct. It has next been contended that while passing the impugned order, the learned trial court has taken note of the order which has been passed by Judicial Magistrate, First Class, under section 125 of Criminal Procedure Code. In support of his this contention, he referred to paragraph-4 of the order. It is next contended that looking to the income of the husband, what the petitioner pleaded and mere denied of the same by the petitioner the amount of maintenance which has been awarded in favour of wife and son is towards lower side. Lastly, it is contended that the cost of litigation is also awarded towards lower side. However, the learned counsel for the respondent does not dispute that the respondent being a woman, is eligible to get free legal aid. He submits that the case is pending in Ahmedabad court whereas the respondent is residing at Nayaka,

Taluka: Sami, District: Mahesana and she has to incur heavy expenses for to and fro journey from her place of residence to Ahmedabad to attend the case. He also prayed for awarding expenses under this head.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. I find sufficient merits in the contention of learned counsel for the respondent that the petitioner has not disclosed his income before the learned trial court. The wife has stated his income to be Rs.10,000/= per month and in the absence of any income disclosed by petitioner, the learned trial court should have accepted it to be the income of petitioner and accordingly maintenance should have been awarded. However, as the wife has not challenged that order in these proceedings, the amount of maintenance which has been awarded in favour of wife and son cannot be enhanced. It is not correct to contend on the part of learned counsel for the petitioner that while passing the impugned order, the learned trial court has not taken into consideration the order which has been passed by Judicial Magistrate, First Class, under section 125 of the Criminal Procedure Code. From paragraph-4 of the judgment, I find that this order was not only noticed but all necessary details of the order were given by the trial court. It is always open to the trial court to consider, looking to the income of the husband that what amount has to be awarded as maintenance to the wife and son and not to give set off to the amount which has been awarded u/s.125 of Criminal Procedure Code. In the facts of the case, otherwise also, as what I feel that the amount of maintenance awarded to both, the wife and the son is towards the lower side and no interference is called for with the order of the trial court.

#. I find sufficient justification in the contention of learned counsel for the petitioner that as the wife is eligible for free legal aid and that is the case with minor son, the learned trial court should not have awarded the cost of litigation. Instead of awarding this cost and putting this burden on the shoulder of husband, the learned trial court should have directed the wife to go to the concerned authority to get free legal aid. However, so far as the claim of wife towards expenses of attending the court on dates which are fixed in the matter is concerned, it is always open to her to apply to the concerned court and as and when such application is made, the court will pass appropriate order for reimbursement of expenses for undertaking to and fro journey.

#. In the result, this special civil application succeeds in part. Though the order of the court below of grant of maintenance to the wife and son in the sum of Rs.700/= and Rs.400/= per month respectively is maintained, the order of the learned court to the extent it relates to awarding Rs.2,000/= towards the costs of litigation, is quashed and set aside. Rule is made absolute to the aforesaid extent only. No order as to costs.

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(sunil)